

BP MINERALS AMERICA
MEMORANDUM

To: Richard Pierce

Date: July 20, 1988

From: Doug Duskin

Subject: Barite Hill, McNair Title Work on Leased Properties

Attached for your information and files is a copy of the title analysis done by the McNair law firm of Columbia, South Carolina for Hogan & Hartson on behalf of Hawk Resources. Please read it when you have a chance.

dn

Attachment

cc: W. K. Martin (with attachment)

Note to W. K. Martin: Kenny, please note that we have to send a notice of intent to exercise our option to lease to Bowater by September 1.



10755346

HOGAN & HARTSON

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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July 18, 1988

Mr. Douglas J. Duskin
Amselco Minerals, Inc.
1112 Mill Street
P.O. Box 891
Camden, South Carolina 29020


Re: Hawk Investments; McNair Title Work

Dear Doug:

At Hawk's request, I am sending you a copy of the letter dated December 31, 1987, sent by the McNair Firm to us and Hawk concerning the state of title of the Barite Hill properties. As we discussed on the telephone, we have previously furnished to you the title search summaries and commitments for title insurance prepared by Lawyers Title. We now have furnished you all final materials provided to us by the McNair Firm relating to title matters.

Please let me know if you have further questions.

Sincerely,



Bruce W. Gilchrist

Enclosure

cc: Graham Ball

→ Fil - K...
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MCNAIR LAW FIRM, P. A.

ATTORNEYS AND COUNSELORS AT LAW

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December 31, 1987

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Mr. Bruce W. Gilchrist
Mr. Robert M. Jeffers
Hogan & Hartson
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004-1109

Gentlemen:

We have reviewed the mineral leases, prospecting permits and the state of title of the property which is the subject of the Barrite Hill Joint venture between Hawk and Amselco Minerals, Inc. We have provided you with certain information with respect to the fitness of these documents and the title of the property in our letters of August 26, September 16, September 30, and October 7, 1987. This letter is intended to supply more definitive answers to the questions you posed in your letter of September 30, 1987. We understand that it is also intended to be relied upon by our mutual client, Hawk Investments Limited.

Specifically, the following issues will be discussed on a tract by tract basis:

1. Whether the lease or permit allows Amselco to conduct the activities contemplated by the Farmout Agreement and Mining Operating Agreement for the time periods set forth therein;

2. Whether the lessor or other party that executed the lease or permit was owner of the property rights leased on the date of execution of the lease or permit;

3. Whether the lease or permit has been assigned to Amselco Minerals, Inc.;

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4. Whether the lease or permit is in effect as of this date;

5. Whether there are any liens or other encumbrances of record against the leasehold which would adversely affect the consummation of the transactions and operations contemplated by the Farmout Agreement and the Mining Operating Agreement;

6. Whether there exist any impediments in the lease or permit which would prevent Amselco from assigning an interest in the lease or permit to Hawk; and

7. Any general comments or notes which we have on the mining of the tract which are not included in items 1-6.

The materials on which we have relied, with your permission, include sixty-year title abstracts on the properties and title insurance commitments issued on the abstracts, copies of which have been provided to you, photocopies of the operative lease agreements, permits and assignments and the latest drafts of the Farmout Agreement and Mining Operating Agreements which have been provided to us (i.e. the drafts of October 5, 1987, with written comments). The initial title abstracts have not been updated.

It should be noted that the title abstracts cover a period of 60 years--the period of time over which title is typically abstracted in South Carolina for purposes of obtaining title insurance. There was a gold boom in South Carolina in the late 1800's. During that period, in some areas of South Carolina, mineral rights were occasionally separated from fee ownership by either a conveyance of mineral rights separate from the fee or a conveyance reserving mineral rights in the grantor. Thus, while we may be able to obtain title insurance based on the 60 year search, Hawk's title to the mineral rights may not be absolute. This would be a factor in favor of obtaining title insurance.

There are four private parcels of land under contract by Amselco and three tracts of Federal land for which Amselco has permits to prospect. Since two of the private parcels are leased from the Dorn family, the private parcels will be discussed in three sections entitled "Dorn Tracts", "Rainsford Tract" and "Catawba Timber Tract". All three Federal tracts will be discussed in a single section entitled "Federal Tracts".

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The Dorn Tracts

There are two leases for the Dorn tracts. One is among Gold Fields Mining Corporation, Jennings Gary Dorn, Sr., Virginia M. Dorn, husband and wife, and Bettye Workman Dorn (the "First Dorn Lease") and the second is among Gold Fields Mining Corporation, Jennings Gary Dorn, Sr. and Virginia M. Dorn (the "Second Dorn Lease"). Both Dorn leases are on Gold Fields Mining Corporation's printed forms. Because of the copy quality, the leases are very difficult to read but most of the pertinent provisions are legible.

1. The term of the Mining Operating Agreement is 20 years from its effective date, "and for so long thereafter as Products are produced from the Property." The Dorn leases each have a stated initial term of 21 years from November 1983 and continue indefinitely for so long thereafter as the advance royalty plus a "delay rental" of \$3,000 per year are paid while no mining is carried on.

The rights granted under the Dorn Leases include the rights to enter the property to survey, to explore, to prospect, to drill, to develop, and to cross mine in any manner whether by surface, pit or underground mining methods, to stockpile, to remove, to leach, to concentrate, to mill, to process, to ship and to market all ores, metals, minerals, tailings, concentrates and mineral products, excepting only associated hydrocarbon, sulfur, sand, gravel and topsoil.

2. The title abstracts show that the proper property interest holders entered into the leases and assignments as lessor and assignor, as appropriate, for these tracts.

3. Gold Fields Mining Corporation assigned these leases to Amselco Exploration, Inc. by an assignment dated January 30, 1985. Amselco Exploration, Inc. assigned its interest to Amselco Minerals, Inc. effective November 15, 1986. The Dorns have consented to the assignment from Gold Fields Mining Corporation to Amselco Exploration, Inc. and to the assignment of a 1% to 49% interest to Hawk. Note that the Farmout Agreement and the Mining Operation Agreement contemplate that Amselco can "put" the remaining 51% interest to Hawk and the Dorn's have not consented to the transfer of this additional interest.

4. The terms of the Dorn Leases have commenced. Without confirming with the Dorns and Amselco that there have

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been no breaches or defaults under the leases and that all payments required thereunder have been made, it is not possible to determine whether the leases are actually in effect. Amselco has represented that, to the best of its knowledge, the leases are valid and it is in compliance with the terms thereof pursuant to paragraph 15.A of the Farmout Agreement.

5. Both Dorn tracts are encumbered by a mortgage to The Dorn Banking Company in the amount of \$115,000, which also encumbers the mineral rights under both tracts. Unless a subordination of this mortgage to the Dorn Leases is obtained, The Dorn Banking Company will continue to have a lien in the amount of \$115,000 on both the land and the minerals under the land. As of the date of the title abstract, except for the mortgage, there were no liens or encumbrances of record on the tract subject to the First Dorn Lease. The same was true of the Second Dorn Lease, except for four easements or rights-of-way of record granted over the tract subject to the Second Dorn Lease to South Carolina Electric and Gas Company and Carolina Power and Light Company. These appear to be typical for power and utility providers. However, depending on where the easements and rights-of-way are with respect to the mine, some renegotiation of the terms of the easements or rights-of-way with the grantees or movement of utility lines may be necessary.

6. There are no impediments to Amselco's assignment of the Dorn leases to Hawk.

7. There is a discrepancy in the number of acres in which leasehold interest is granted under the First Dorn Lease. The property descriptions for the First Dorn Lease and its memorandum of lease recorded in McCormick County reference 153.1 acres described in Deed Book 38 Page 41 in the McCormick County land registry. The deed recorded at Deed Book 38 Page 41 describes a parcel of 140 acres. It therefore appears that the leasehold consists of 140 acres.

In addition, the title to the tract subject to the Second Dorn Lease has two heirs problems. First, Robert McKinney died in 1922 and left a life estate to his wife, Molly. If Molly is still living she could have the absolute right to occupy a portion of the land. We have no record of Molly's death but have located her granddaughter and have obtained assurances from her granddaughter that Molly is deceased. The title insurance company has agreed to provide affirmative coverage over her rights based on these

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assurances. Second, in 1944, Dr. R. M. Fuller's estate granted an interest in a 112 acre portion of the tract to the Dorns. There is no recorded deed into Dr. Fuller. Because of the lack of a recorded deed, we will be unable to be certain that the Dorns in fact own the 112 acre tract without bringing a suit to quiet title to the property. However, the title insurance company has agreed to insure over this defect.

The Rainsford Tract

1. The lease for this tract, as amended, will expire on December 14, 1997, well before the expiration of the 20 year term of the Mining Operation Agreement. Although the lease term expires in 1997, Amselco has an option to purchase the entire tract at any time prior to that date for \$512,000.

The lease grants the lessee a leasehold interest in the land and exclusive rights and privileges to "explore for, develop, mine (by open pit, underground solution mining or any other method), extract, mill, store, remove and market therefrom all minerals, metals, ores and materials...."

2. The title abstract shows that the proper interest holders signed the leases and assignments as lessor and assignor, as appropriate.

3. Continental Oil Company is the original party to the lease. Conoco, Inc., successor by reason of name change to Continental, assigned its interest in the lease to Gold Fields Mining Corporation on January 21, 1983. Gold Fields Mining Corporation assigned the lease to Amselco Exploration, Inc. on January 30, 1985. Amselco Exploration, Inc. assigned the Lease to Amselco Minerals, Inc. effective November 15, 1986.

4. The term of the Rainsford lease has commenced. Without confirming with the parties that there have been no breaches or defaults under the lease and that all amounts required to be paid thereunder have been paid, it is not possible to determine whether the agreement is in effect. As with the Dorn leases, Amselco has represented and warranted that the lease is valid and that it has complied with the terms thereof.

5. As of the date of the title abstract, there were no liens or encumbrances of record on the property.

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6. There are no impediments to a transfer from Amselco to Hawk as the lease may be assigned in whole or in part without consent.

7. None.

The Catawba Timber Tract

The parties to the Exploration Agreement with Option to Lease for the Catawba Timber tract are Bowater Incorporated, as successor by reason of mergers and name changes to Catawba Timber Company, and Amselco Exploration, Inc.

1. The Catawba Timber tract agreement grants exploration rights for a period of one year commencing September 1, 1985, with an optional election to extend the exploration period for two additional years upon payment to Bowater of \$7,400 per each year. During this option period, Amselco has the right to test the property to determine the amount of mineral reserves under the premises.

Further, the document provides Amselco with an option to lease the premises for so long as Amselco continues to make advance royalty payments under the lease for a period not to exceed 20 years from the date the option is exercised, unless the lessee is diligently pursuing commercial production on the premises, in which case the term ends when commercial production ceases. This option to lease must be exercised by the delivery of notice to Bowater prior to expiration of the exploration rights.

The advance minimum royalty payments are, from the year that lessor elects to mine, as follows:

Year	Advance Minimum Royalty Payments
1	\$ 15,000
2	30,000
3	45,000
4	60,000
5	75,000
6	90,000
7 and Beyond	100,000

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If the lease option is exercised, the tenant will have the right to all ores, minerals, materials, and mineral rights appurtenant thereto except coal, oil, gas and associated hydrocarbon substances, together with the further right to investigate, explore, examine and work the same (by underground mining, surface mining, strip mining or any other method hereafter developed), and to treat, to mill, to store, to ship and to sell or otherwise to dispose of the ores and minerals and receive the full proceeds therefrom.

2. The proper parties in interest signed the leases and assignments as lessor and assignor, as appropriate.

3. This agreement was assigned by Amselco Exploration, Inc. pursuant to an assignment effective the 15th day of November, 1986, to Amselco Minerals, Inc. The agreement provides that no assignment by the tenant will relieve the tenant of its obligation or liability to Bowater.

4. The term of the Exploration Agreement has commenced. The Agreement requires a payment to extend the term from its original expiration date of September 1, 1986. We understand that the exploration term has been extended, but have no written evidence of the extension. We have no record of the lease option being exercised.

5. As of the date of the title abstract, there were no liens or encumbrances of record on this tract.

6. There are no impediments to Amselco's assignment of its rights under this agreement to Hawk.

7. The preliminary title insurance commitment for this tract contained an exception to the possible outstanding interests of the heirs of J. B. Parks and possible debts of his estate. Apparently, J. B. Parks died in 1955 and the probate package for his estate was never filed in McCormick County. We located the probate package for his estate in Greenwood County and are in the processing of filing it in McCormick County. The exception has been taken out of the title insurance commitment.

This agreement is for an initial term of 12 months and can be extended for two additional 12 month periods. However, the lessee must give notice in writing to Bowater that it intends to extend the term or exercise the option to lease. Consequently, it is very important that this be done on an annual basis, including September 1, 1987. Furthermore, by September 1, 1988, assuming the term has been

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extended to that date, the lessee must either abandon the lease or exercise its option.

The Federal Tracts

There are three permits to prospect Federal lands administered by the U.S. Forest Service.

1. The permits allow the permittee to conduct surface exploration, and, if an exploration plan is approved, to conduct surface disturbing operations such as core drilling. The permits do not have stated terms. Pursuant to a Department of Interior, Bureau of Land Management Decision dated June 7, 1985, the term of the permits were extended until June 6, 1989. According to Forest Service officials, mining may not be conducted without a lease issued by the Department of Interior, Bureau of Land Management.

2. The lands which are subject to the Federal permits were administered by the Forest Service at the time the permits were issued.

3. The permits were issued in the name of W. E. Morin and were assigned by Morin to Amselco Exploration, Inc. This assignment was approved and made effective on December 1, 1983 by a decision of the Department of Interior, Bureau of Land Management. No further consents to this assignment are required. We have no record of an assignment of the permits by Amselco Exploration, Inc. to Amselco Minerals, Inc. It will be necessary to obtain a Department of Interior, Bureau of Land Management consent to this second assignment.

4. According to Forest Service office in Columbia, the permits were in effect on November 30, 1987.

5. As of the date of the title abstract, there was one easement for utility installation and maintenance granted to Carolina Power and Light Company which encumbers Tract 220-K. As of that date, other than this easement, there were no liens or encumbrances of record on the Federal tracts.

6. No assignment of a prospecting permit is effective until the Department of Interior, Bureau of Land Management consents to the assignment. In order to obtain the consent the executed assignment must be sent to the Bureau of Land Management for review.

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7. Obtaining a mining lease for Federal lands is a time consuming process, according to Forest Service officials, and can take as long as three years. The application process generally includes an environmental analysis report under the National Environmental Policy Act of 1969, 42 U.S.C.A. §4321, et seq., and may require an environmental impact statement.

There is, however, an alternative to obtaining a mineral lease from the Department of Interior. The permittee may trade the surface rights to other lands suitable for Forest Service purposes to the Forest Service for the surface rights to the permitted lands if permitted lands are eligible for exchange. Forest Service officials indicated that all three tracts were eligible for exchange and that Amselco had taken actions indicating it was planning to trade for one of the tracts (Tract 60-d). Our understanding from Amselco is that the value of the Federal tract has been determined and Amselco is actively looking for land of similar value suitable for trade.

I hope this letter has been of assistance to you. Please call me with any questions which you may have.

Very truly yours,

MCNAIR LAW FIRM, P.A.

By 
A Member of the Firm